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14 UNITED STATES DISTRICT COURT

15 DISTRICT OF NEVADA

16 ROBERT ARMIGO,

17 Plaintiff,

18 v.

19 OZONE NETWORKS, INC. d/b/a OPENSEA,
 a New York Corporation, YUGA LABS LLC
 20 d/b/a BORED APE YACHT CLUB, a Delaware
 limited liability company; LOOKSRARE; and
 21 DOES 1 to 50,

22 Defendants.

Case No.: 3:22-cv-00112-MMD-CLB

**DECLARATION OF MICHAEL S.
 DICKE IN SUPPORT OF DEFENDANT
 YUGA LABS' MOTION TO STAY
 DISCOVERY OR EXTEND
 DEADLINES UNDER FRCP 26(F) AND
 LR 26-1 AND TO VACATE CASE
 MANAGEMENT AND SCHEDULING
 ORDERS**

1 I, Michael S. Dicke, hereby declare as follows:

2 1. I am a partner at Fenwick & West LLP, counsel for defendant Yuga Labs, Inc.
3 (“Yuga Labs”). I submit this declaration in support of Yuga Labs’ Motion to Stay Discovery or
4 Extend Deadlines Under Federal Rule of Civil Procedure 26(f) and Local Rule 26-1 and to
5 Vacate Case Management and Scheduling Orders. I have personal knowledge of the matters set
6 forth below and, if called upon, would testify competently to them.

7 2. Prior to moving to dismiss, counsel for Yuga Labs sent two letters to plaintiff’s
8 counsel explaining why it is that personal jurisdiction over Yuga Labs in Nevada is absent. In
9 connection with the second letter, on April 15, 2022, counsel for Yuga Labs also advised that the
10 Company had nothing to do with billboards and bus stop ads that plaintiff suggested provided a
11 basis for jurisdiction. These are the same billboards and bus stop ads used to support jurisdiction
12 in the later-filed First Amended Complaint (“FAC”).

13 3. On June 3, 2022, Yuga Labs moved to dismiss the Complaint, pursuant to Federal
14 Rules of Civil Procedure 12(b)(2) and 12(b)(6), for lack of personal jurisdiction and failure to
15 state a claim.

16 4. On June 8, 2022, given that Yuga Labs’ motion to dismiss the Complaint was
17 pending before the Court, including on jurisdictional grounds, Yuga Labs informed plaintiff that
18 a conference pursuant to Federal Rule of Civil Procedure 26(f) and Local Rule 26-1 was
19 premature. Yuga Labs asked plaintiff to stipulate to extend the deadline to hold a Rule 26(f)
20 conference imposed by Local Rule 26-1. Plaintiff’s counsel refused to extend the deadline.

21 5. On June 24, 2022, instead of responding to Yuga Labs’ motion to dismiss,
22 plaintiff filed the FAC. ECF No. 61.

23 6. On July 5, 2022, Yuga Labs informed plaintiff that it intended to renew its motion
24 to dismiss for lack of personal jurisdiction and failure to state a claim. Yuga Labs again
25 requested that plaintiff stipulate to extend the deadline to hold a Rule 26(f) conference imposed
26 by LR 26-1. Plaintiff’s counsel again refused to extend the deadline.

27 7. On July 8, 2022, without waiving its jurisdictional arguments, Yuga Labs
28 participated in a Rule 26(f) conference in good faith. Yuga Labs raised its objections to

1 discovery proceeding, including an objection to the timing for initial disclosures pursuant to
 2 Federal Rule of Civil Procedure 26(a)(1)(c), and an objection to setting a schedule for further
 3 proceedings until the Court has had an opportunity to weigh the jurisdictional and substantive
 4 issues raised in Yuga Labs' then-upcoming motion.

5 8. The parties also met and conferred on this motion to stay discovery, with
 6 plaintiff's counsel reiterating their refusal to stipulate to defer Rule 26(f) and LR 26-1 discovery
 7 pending resolution of the anticipated motions to dismiss the FAC for lack of jurisdiction and for
 8 failure to state a claim, and indicating that plaintiff would seek to move forward with discovery
 9 notwithstanding any pending motion, thereby necessitating this motion.

10 9. The parties' positions regarding discovery were outlined in the parties' Stipulated
 11 Discovery Plan and Scheduling Order, filed on July 20, 2022, including defendants' express
 12 objection to the timing of initial disclosures under Rule 26(a)(1)(c).

13 10. On July 20, 2022, counsel for Yuga Labs' sent a letter to counsel for plaintiff,
 14 inquiring about the sale of his Incline Village residence prior to the filing of the FAC. No
 15 response to the inquiry was received.

16 11. On July 29, 2022, Yuga Labs filed a motion to dismiss the FAC pursuant to
 17 Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6) for lack of personal jurisdiction and
 18 failure to state a claim.

19 I declare under penalty of perjury that the foregoing is true and correct. Executed this
 20 third day of August, 2022, in Piedmont, California.

21 /s/ Michael S. Dicke
 22 Michael S. Dicke
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CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b) and Electronic Filing Procedure IV(B), I certify that on August 3, 2022, a true and correct copy of the **DECLARATION OF MICHAEL S. DICKE IN SUPPORT OF DEFENDANT YUGA LABS' MOTION TO STAY DISCOVERY OR EXTEND DEADLINES UNDER FRCP 26(f) AND LR 26-1 AND TO VACATE CASE MANAGEMENT AND SCHEDULING ORDERS** was transmitted electronically through the Court's CM/ECF e-filing electronic notice system to all attorneys associated with the above-captioned case.

/s/ Michael S. Dicke

Michael S. Dicke
Fenwick & West LLP

FENWICK & WEST LLP